

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

ENTERED ON DOCKET  
JUL 31 2007

IN RE: ) CHAPTER 7  
STEVEN LODEN DYE, )  
Debtor. ) CASE NO.06-71024-MHM

**ORDER DENYING DEBTOR'S MOTION TO CONVERT TO CHAPTER 11**

This case commenced September 5, 2006, when Debtor filed his Chapter 13 bankruptcy petition *pro se*. Several creditors and the Chapter 13 Trustee filed motions to convert this case to a Chapter 7 case. Hearing on the motions to convert was held January 5, 2007, at which Debtor consented to conversion. By order entered January 5, 2007, this case was converted. Since conversion, multiple and extensive hearings have taken place involving *inter alia* the Chapter 7 Trustee's motions to compel Debtor to turn over property of the estate, motion for approval of compromise and notice of abandonment. As a result of the undersigned's familiarity with the facts and circumstances relevant to Debtor's motion to convert, together with a review of the record, under §102, no further notice or hearing is necessary.

Section 706(a) provides:

The debtor may convert a case under this chapter to a case under chapter 11...of this title at any time, if the case has not been converted under section ...1307 of this title....

As noted above, Debtor's case was initially filed as a Chapter 13 case and was converted to Chapter 7 under §1307. Therefore, Debtor must show more than that he is eligible to be a debtor under Chapter 11.

Debtor asserts that the case should be converted to Chapter 11 because the Chapter 7 Trustee has discovered assets, that the foreclosure sale of Debtor's real property occurred in violation of the automatic stay, and that Trustee has, without explanation, rejected \$85,000 in funds that would benefit the estate. As the facts evinced at the numerous hearing held during this case and especially over the past three months show, however, none of the grounds asserted by Debtor have merit. Despite Debtor's presence at these hearings, however, and perhaps because he has no bankruptcy counsel to explain the import of the court's rulings, Debtor seems to be unaware that the court has already heard, considered and ruled on these issues.

Trustee has indeed concluded that the estate has assets available for the benefit of creditors and has undertaken to gather and liquidate those assets in an orderly fashion. The motion to validate the foreclosure sale of Debtor's residence was denied by order entered October 30, 2006. Trustee has requested and obtained approval to employ a realtor to market the residence for sale. The compromise negotiated by Trustee concerns the disposition of the proceeds of the sale of Debtor's residence and provides a carve-out of funds that will be paid to the estate in an amount greater than that to which the estate would otherwise be entitled. Orders have been entered approving that proposed compromise. Finally, on more than one occasion, Trustee has explained the basis of his decision to abandon certain funds that are the subject of two interpleader actions in state court. An order was entered July 12, 2007, overruling Debtor's objections to Trustee's abandonment.

Debtor's motion to convert is largely, if not entirely, a pretext to wrest control of the estate and its assets away from Trustee in order to continue ill-advised and likely fruitless, if not endless, litigation against a single judgment creditor. A cost-benefit analysis would

show that such litigation is unlikely to benefit creditors especially when compared with the compromise negotiated by Trustee. Debtor, who is currently without any significant income, would be unlikely to achieve in a Chapter 11 case an orderly and efficient liquidation of his assets at a cost that would not be substantially greater than in this Chapter 7 case. Debtor has not fully availed himself of the protections and limited benefits of Chapter 7, evidencing instead a skewed version of elemental facts and applicable law. Also, of especial concern is Debtor's capacity to fulfill his fiduciary duties as a debtor-in-possession without competent representation by bankruptcy counsel. Thus, the totality of circumstances confirms that denial of Debtor's motion to convert to Chapter 11 is in the best interests of creditors and the estate. Accordingly, it is hereby

ORDERED that Debtor's motion to convert this case to a Chapter 11 case is *denied*.

**The Clerk, U.S. Bankruptcy Court, is directed to serve** a copy of this order upon Debtor, Debtor's attorney, the Chapter 7 Trustee, the U. S. Trustee, and all creditors and parties in interest.

IT IS SO ORDERED, this the 30<sup>th</sup> day of July, 2007.

  
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MARGARET H. MORPHY  
UNITED STATES BANKRUPTCY JUDGE